

SN. 10/634,727

ATTORNEY DOCKET NO. KIOI:031

**REMARKS**

Claims 1-12 are now pending in this application for which applicants seek reconsideration.

**Amendment**

Claims 1-8 have been amended, and new claims 9-12 have been added. Allowable claim 7 has been placed in independent form to place it in condition for allowance. Claims 4-6 have been amended to improve their form and language. Lastly, independent claim 1 has been amended to define the type of transmission (CVT) and the transmission mechanism thereof, and the function of the discharged torque calculating means. Support for new claims 11 and 12 is found at least on pages 10-12 and original claim 7.

**Allowable Claims**

Claim 7 was indicated to be allowable if they are placed in independent form. As claim 7 has been placed in independent form, it is in condition for allowance. New claim 12 is also believed to be allowable because it incorporates part of allowable claim 7.

**Art Rejection**

Claims 1-6 were rejected under 35 U.S.C. § 102(e) as anticipated by Abe. Claims 1-6 were also rejected under § 102(b) as anticipated by either Mikami (UPS 5,672,138) or Ando (USP 5,496,230). Applicants submit that the present amendment renders moot these rejections because these references would not have taught the claimed discharged torque calculating means for a continuously variable transmission (CVT), as set forth in claims 1, 11, and 12.

As to the formality, the examiner states, in Paragraph 1 of the Detailed Action, that the prior art date of Abe is determined by a pre-AIPA 35 U.S.C. § 102(e). Applicants submit that this issue is really moot because Abe's § 102(e) date based on pre-AIPA and post-AIPA is the same. Nonetheless, applicants submit that it is erroneous for the examiner to apply the § 102(e) date based on pre-AIPA because Abe did not issue from an international (PCT) application, let

SN. 10/634,727

ATTORNEY DOCKET NO. KIOI:031

alone an international application filed before November 29, 2000.

Claim 1 now defines that the discharged torque calculating means calculates a friction discharged torque produced by contact frictional force, generated when the primary and secondary pulleys sandwich the belt therebetween. The engine torque control section controls torque of the engine based on the calculated friction discharged torque.

Abe, Mikami, and Ando are not related to controlling a continuously variable transmission that uses a belt to transmit power. Accordingly, these references would not have disclosed or taught calculating a friction discharged torque produced by a belt contact frictional force. Indeed, there simply would not have been any motivation for these references to calculate a friction discharged torque produced by a belt contact frictional force. Therefore, applicants submit that claim 1 and all claims depending therefrom patentably distinguish over the applied references.

Similarly, applicants submit that the applied references would not have taught an engine torque control for a CVT as set forth claims 11 and 12.

#### Conclusion

Applicants submit that claims 1-12 patentably distinguish over the applied references and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicants urge the examiner to contact the undersigned to expedite prosecution.

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